

AMENDED IN ASSEMBLY JUNE 18, 2009

AMENDED IN ASSEMBLY JUNE 11, 2009

AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 717

Introduced by Senator Runner

February 27, 2009

An act to amend Sections 70, 70.2, 70.4, 70.8, 71.2, 71.4, 71.8, 72, 72.2, 76, 76.3, 76.5, 76.6, 86, 131, 133, 264, 300, 301, 302, 304, 305, 306, 307, 308, 505.5, 571, 652, 654.5, 658.3, 668.1, 738, and 780 of, to add Sections 309 and 310 to, to repeal Section 660.2 of, and to repeal Chapter 2.5 (commencing with Section 110) of Division 1.5 of, the Harbors and Navigation Code, relating to boating and waterways.

LEGISLATIVE COUNSEL'S DIGEST

SB 717, as amended, Runner. Boating and waterways: Department of Boating and Waterways.

Under existing law, the Department of Boating and Waterways regulates, among other things, harbors, ports, boating, and waterways pursuant to the Harbors and Navigation Code.

Existing law authorizes the department to acquire, construct, develop, and improve small craft harbors, subject to provisions that require the department to transfer these facilities to a county, city, or district, as specified, that requests ~~it~~ *that transfer* and enters into an agreement to repay the state for acquiring and developing the harbor and that authorize the deferral of a local governing body's repayment of the costs to the state for these activities.

This bill would authorize, rather than require, a small craft harbor acquired or developed by the department to be transferred to a county,

city, or district under specified circumstances. The bill would eliminate certain authority of the department to defer repayments required of a local governing body or reimburse deficiencies of revenues to allow a facility to meet operation and maintenance costs of a project.

Existing law authorizes the department, subject to approval of the Legislature as provided, to make loans to cities, counties, or certain districts for the planning, acquisition, construction, improvement, maintenance, or operation of small craft harbors and facilities in connection with the harbors and connecting waterways. The department is required to establish rules and regulations to be followed in making these loans that include certain policies and standards.

This bill would also authorize these loans for the design of the harbors and facilities.

Existing law authorizes the department to make loans to private marina owners to develop a recreational marina, which may be used for various activities. Existing law limits a loan to a private marina owner to 75% of the funds annually budgeted for recreational marinas.

This bill would also authorize these loans for acquisition and would delete the limit on the loan amount.

Existing law requires loans under these provisions to include certain minimum terms and conditions, including, for loans for private marinas, a minimum annual rate of interest charged by the department of 1% per annum, as provided.

This bill would revise these loan conditions to provide that the annual interest rate charged for a loan shall be set annually by the commission, as described. The bill would authorize the department to restate existing loans, upon written request by the borrower, and upon approval by the commission.

Existing law requires a person 11 years of age or younger to wear a United States Coast-Guard-approved ~~Guard-approved~~ *Guard-approved* life vest when aboard a motorboat, sailboat, or vessel that is underway.

This bill would apply this requirement instead to a person under 13 years of age.

Existing law makes it a misdemeanor to moor a vessel or hang on with a vessel to a buoy or beacon.

This bill would except from this prohibition designated mooring buoys.

Existing law requires the department, upon the request of the Director of Fish and Game, to perform various activities regarding efforts to

control and eradicate *Caulerpa taxifolia* from the Agua Hedionda Lagoon in San Diego County.

This bill would delete this provision.

Existing law requires a person convicted of certain violations of the Harbors and Navigation Code to complete and pass a boating and safety course approved by the department. It is unlawful to operate a motorized vessel or have the engine of a motorized vessel run idle while an individual is teak surfing, platform dragging, or bodysurfing behind the motorized vessel or while an individual is occupying or holding onto the swim platform, swim deck, swim step, or swim ladder of the vessel.

This bill would impose the boating and safety course requirement on a person who violates this provision.

Existing law provides that a person who violates various provisions of the Harbors and Navigation Code is guilty of a felony, or is punishable by imprisonment in the state prison, for unspecified or specified timeframes.

This bill would provide that a person who violates these provisions is guilty of a felony and would establish the same maximum fine and imprisonment for all of these felony violations, with different penalties for first and 2nd or subsequent convictions.

Existing law also provides that certain violations of the Harbors and Navigation Code are misdemeanors.

This bill would establish the penalty for these misdemeanor violations, with different penalties for first, 2nd, and 3rd or subsequent convictions.

By increasing certain penalties for misdemeanor violations, this bill would impose a state-mandated local program.

Under existing law, local agencies are required to certify to the Department of Boating and Waterways that, for specified small craft harbor or boating facilities funded by the department, adequate shoreside facilities, as described, are provided or to provide written findings showing why the facility cannot certify to these conditions.

This bill would require local agencies to make that certification annually and for additional facilities, thereby imposing a state-mandated local program.

Existing law requires a city, county, or district that has received funds for the construction or improvement of small craft harbors that provide facilities for commercial fishing vessels to provide alternative equivalent facilities for commercial passenger fishing vessels and private recreational vessels.

This bill would require that alternative equivalent facility to additionally provide vessel pumpout facilities, oil recycling facilities, and receptacles for separating, reusing, or recycling solid waste materials, thereby imposing a state-mandated local program. The bill would also provide that a small craft harbor or boating facility constructed, developed, or improved with specified funds meet, at a minimum, applicable green building standards.

The bill would make technical, nonsubstantive changes to certain provisions of the Harbors and Navigation Code.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 70 of the Harbors and Navigation Code
- 2 is amended to read:
- 3 70. The department may prepare plans for, and acquire,
- 4 construct, develop, and improve, small craft harbors, facilities in
- 5 connection with the harbors, and connecting waterways. A small
- 6 craft harbor so acquired or developed may be transferred, and its
- 7 operation relinquished, to a county or city, or a district having
- 8 power to operate a small craft harbor, in which any part of it is
- 9 located, upon the request of the city, county, or district, if the city,
- 10 county, or district enters into an agreement with the department
- 11 for repayment to the state of all costs incurred by the department
- 12 in acquiring and developing the small craft harbor, including
- 13 planning costs. The city, county, or district shall be required by
- 14 the department to repay those costs. The payments shall be made
- 15 in the amounts and at the times that are provided by the agreement.
- 16 SEC. 2. Section 70.2 of the Harbors and Navigation Code is
- 17 amended to read:

1 70.2. (a) The department may prepare or contract for the
2 preparation of plans for, acquire or contract for the acquisition of,
3 construct or contract for the construction of, develop and improve,
4 or contract for the development and improvement of any portion
5 of coastal small craft harbors that are normally nonrevenue
6 producing, such as jetties, breakwaters, dredging, seawalls, piers,
7 and communication centers.

8 (b) This program may be conducted in cooperation with the
9 federal government for harbor development along the coastline of
10 California. In those cooperative projects, the department may
11 assume the role of “local sponsor” as that term is used in
12 agreements with the federal government with regard to those
13 projects referred to in this section if before the department assumes
14 the role of “local sponsor” it determines to its satisfaction that the
15 local entity that would otherwise be designated as local sponsor
16 cannot fulfill the obligations commensurate with that designation.

17 (c) If the nonrevenue producing facilities are to be a portion of
18 an existing harbor, the department, prior to construction of those
19 facilities, shall enter into an agreement with the local governing
20 body of the harbor that provides that revenues from harbor
21 operations and harbor district taxes shall serve as security for
22 repayment of the state contribution to the cost of construction and
23 the local governing body shall assume responsibility for the
24 operation and maintenance of the facilities constructed under the
25 agreement.

26 (d) If nonrevenue producing facilities are to be constructed at
27 a location where no harbor operation is being conducted by a
28 governmental entity, the department may initiate construction of
29 the facilities after securing an agreement with the appropriate local
30 jurisdiction that the local entity shall assume the responsibility of
31 operation and maintenance of the facilities, as well as repayment
32 of all related costs of the department, as agreed to in writing.

33 (e) Harbor facilities provided by the department pursuant to this
34 section shall be defined as nonrevenue producing features for the
35 purpose of the term of repayment under subdivision (a) of Section
36 71.8.

37 SEC. 3. Section 70.4 of the Harbors and Navigation Code is
38 amended to read:

39 70.4. No city, county, or district that has received, or is
40 receiving, money under this division for the design, planning,

1 construction, or improvement of a small craft harbor of refuge
2 shall exclude, consistent with the intent of Section 40, the use of
3 that harbor by a commercial boat, or any vessel in need of a safe
4 harbor for refuge purposes. Each vessel entering and using a harbor
5 of safe refuge pursuant to this section shall pay the published fees
6 for services rendered while in the harbor and shall comply with
7 all other applicable local, state, and federal laws while in the harbor
8 and while using any facilities in the harbor.

9 SEC. 4. Section 70.8 of the Harbors and Navigation Code is
10 amended to read:

11 70.8. The department may contract with a federal agency, state
12 agency, or city, county, or district, in the design, planning,
13 construction, development, and improvement of small craft harbors
14 pursuant to this chapter, or for the maintenance and operation of
15 any small craft harbors under the jurisdiction of the department.

16 SEC. 5. Section 71.2 of the Harbors and Navigation Code is
17 amended to read:

18 71.2. (a) The department shall protect small craft harbors under
19 its jurisdiction from damage and preserve the peace in those
20 harbors. The director and the employees of the department that
21 the director designates have the authority and powers conferred
22 by law upon peace officers listed in Section 830.33 of the Penal
23 Code for those harbors. The department may adopt rules and
24 regulations that may be necessary for the purposes of this section.
25 A violation of those rules or regulations is a misdemeanor.

26 (b) A person found guilty of a misdemeanor violation of this
27 section, upon first conviction shall be subject to a fine not to exceed
28 one thousand dollars (\$1,000) or imprisonment in the county jail
29 not to exceed 30 days, or both that fine and imprisonment. Upon
30 a second conviction, the punishment shall be a fine of not to exceed
31 five thousand dollars (\$5,000) or imprisonment in the county jail
32 not to exceed 90 days, or both that fine and imprisonment. Upon
33 a third or subsequent conviction, the punishment shall be a fine of
34 not to exceed ten thousand dollars (\$10,000) or imprisonment in
35 the county jail not to exceed one year, or both that fine and
36 imprisonment.

37 SEC. 6. Section 71.4 of the Harbors and Navigation Code is
38 amended to read:

39 71.4. (a) (1) The department, subject to the approval of the
40 Legislature in accordance with Section 85.2, may make loans to

1 qualified cities, counties, or districts having power to acquire,
2 construct, and operate small craft harbors, for the design, planning,
3 acquisition, construction, improvement, maintenance, or operation
4 of small craft harbors and facilities in connection with the harbors,
5 and connecting waterways, if the department finds that the project
6 is feasible.

7 (2) The minimum annual rate of interest charged by the
8 department for a loan shall be set annually by the commission and
9 shall be based on the Pooled Money Investment Account interest
10 rate.

11 (b) The department shall establish, by rules and regulations,
12 policies and standards to be followed in making loans pursuant to
13 this section so as to further the proper development and
14 maintenance of a statewide system of small craft harbors and
15 connecting waterways. To the greatest extent possible, the
16 department shall adhere to customary commercial practices to
17 ensure that loans made pursuant to this section are adequately
18 secured and that the loans are repaid consistent with the terms of
19 the loan agreement. Any rules and regulations shall include policies
20 and standards for restrooms, vessel pumpout facilities, oil recycling
21 facilities, and receptacles for the purpose of separating, reusing,
22 or recycling all solid waste materials.

23 (c) The department shall develop weighing and ranking criteria
24 to qualify and prioritize the public loans.

25 (d) A loan under this section shall be repaid as provided in
26 Section 70.

27 (e) Rates to be charged for the use of the boating facilities shall
28 be established by the city, county, or district, subject to the approval
29 of the department, in every loan contract. The department shall
30 concern itself with the rates charged only as prescribed in Section
31 71.8. The rates set shall be based on a monthly berthing charge,
32 and the department shall monitor these rates to ensure that the
33 berthing charges are sufficient to ensure timely and complete
34 repayment of the loan.

35 (f) The department shall submit any project for which it
36 recommends any loan be made to the Governor for inclusion in
37 the Budget Bill.

38 (g) The department may restate an existing loan under this
39 article, upon written request by the borrower, and upon approval
40 by the commission.

SEC. 7. Section 71.8 of the Harbors and Navigation Code is amended to read:

71.8. (a) A contract or agreement for a transfer pursuant to Section 70 or a loan pursuant to Section 71.4, for which gross revenues of a small craft harbor are made the security for repayment shall include, but is not limited to, provisions requiring the governing body of the city, county, or district to perform all the following:

(1) Punctually pay all installments of principal and interest on money owed to the state.

(2) Continuously operate in an efficient and economical manner all small craft harbor facilities acquired, constructed, improved, or completed in full or in part as a result of transfers or loans by the state.

(3) Make all repairs, renewals, and replacements necessary to the efficient operation of the small craft harbor facilities and to keep the facilities in good repair at all times.

(4) Preserve and protect the security interest of the state in all respects by procuring insurance on the facilities in an amount and of the type approved by the department.

(5) Subject to subdivision (c), periodically fix, prescribe, and collect fees, rentals, or other charges for services and facilities of the small craft harbor facilities sufficient to produce gross revenues adequate for payment of the following amounts in the order set forth:

(A) All installments of principal and interest on money owed the state as they come due.

(B) All expenses of operation, maintenance, and repair of the small craft harbor facilities.

(C) Any additional sums as may be required by the department for any sinking fund, reserve fund, or other special fund established for the further security of the loan or transfer or as a depreciation or other charge in connection with the small craft harbor facilities.

(6) Repay loans with regard to the revenue-producing features, as determined by the department, constructed under the loan over a period not to exceed 30 years.

(7) Repay loans with regard to the non-revenue-producing features, as determined by the department, constructed under the loan over a period not to exceed 50 years.

1 (b) The department may require the contract or agreement to
2 include a requirement that installments of principal and interest
3 on money owed the state shall be paid from gross revenues prior
4 to any other expenditures from those revenues. No loan of funds
5 shall be made to a city, county, or district unless the loan is
6 approved by the department as conforming to the policies
7 established by the department. A contract or agreement shall not
8 be effective until approved by the Department of General Services
9 for legality, form, and completeness.

10 (c) The fees for the use of launching ramps in a small craft
11 harbor shall not exceed the sum of the following:

12 (1) The costs of operation and maintenance of the launching
13 ramp and related harbor facilities, including, but not limited to,
14 access to the ramp from the shore and the ocean.

15 (2) The prorated capital costs of that portion of the facility which
16 is determined by the governing body of the small craft harbor or
17 boating facility to be necessary to pay amounts specified in
18 paragraph (5) of subdivision (a).

19 (d) If the city, county, or district defaults on the payment of
20 money owed the state, or otherwise fails to perform in accordance
21 with the terms and conditions of the contract or agreement, the
22 state shall recover the defaulted loan and the department may
23 assume the operation and maintenance of the harbor or facility or
24 enter into one or more contracts for its operation and maintenance.

25 SEC. 8. Section 72 of the Harbors and Navigation Code is
26 amended to read:

27 72. (a) If the legislative body of a city, county, or district has
28 acquired, constructed, or improved small craft harbor facilities
29 pursuant to an agreement or contract for a transfer pursuant to
30 Section 70, or a loan pursuant to Section 71.4, the facilities may
31 not be leased in whole or in part to a private concessionaire or
32 lessee until the legislative body has published a notice pursuant to
33 Section 6066 of the Government Code inviting bids and has
34 otherwise complied with this section. Prior to publication of the
35 notice, the legislative body shall obtain the approval of the
36 department to the proposed leasing of the harbor facility and to
37 the terms and conditions of the proposed lease. The notice shall
38 distinctly and specifically describe the harbor facilities that are to
39 be leased and set forth the period of the time for which the facilities
40 are to be leased, and the minimum rental to be paid under the lease.

1 The notice shall recite that the lease will reserve to the legislative
2 body the power to fix and determine the rates to be charged by the
3 lessee for the use by the public of the facilities. The notice also
4 shall prominently display the statement that award of the lease by
5 the legislative body is subject to final approval by the department,
6 and fix a time and place for the opening of bids by the legislative
7 body.

8 (b) At the time and place fixed in the notice, the legislative body
9 shall meet and consider all bids that have been submitted. The
10 lease shall be awarded to the highest responsible bidder, but the
11 award shall become final only after the award by the legislative
12 body has been approved by the department.

13 SEC. 9. Section 72.2 of the Harbors and Navigation Code is
14 amended to read:

15 72.2. (a) Notwithstanding other provisions of this chapter, if
16 the legislative body of a city, county, or district has acquired,
17 constructed or improved small craft harbor facilities pursuant to
18 an agreement or contract for a transfer pursuant to Section 70 or
19 a loan pursuant to Section 71.4 under circumstances in which the
20 proposed lease area is land or water area and the terms of the
21 proposed lease call for the lessee to install or construct all
22 improvements, the land or water area may be leased by the
23 legislative body without public bidding, but only after a public
24 hearing, public notice of which shall be given by publication for
25 not less than once a week for two weeks in a newspaper of general
26 circulation published in the county in which the land lies.

27 (b) Prior to publication of the public notice the legislative body
28 shall obtain the written approval of the department to the proposed
29 leasing of the harbor facility and the provisions of the proposed
30 public notice. The public notice shall describe the land or water
31 area that is to be leased, describe in general terms the nature of the
32 development desired by the legislative body, and set forth the
33 period of time for which the land or water area is to be leased, and
34 the minimum rental to be paid under the lease. The public notice
35 shall recite that the lease will reserve to the legislative body the
36 power to fix and determine the rates to be charged by the lessee
37 for the use by the public of facilities developed by the lessee. The
38 public notice also shall contain a prominent statement that award
39 of the lease by the legislative body is subject to final approval by
40 the department, and fix a time and place for the public hearing by

1 the legislative body. The public notice shall invite proposals for
2 leasing from any and all interested parties.

3 (c) At the time and place fixed in the public notice of hearing,
4 the legislative body shall meet and consider the lease proposal
5 submitted. The award of the lease shall become final only after
6 the award by the legislative body has been approved by the
7 department.

8 SEC. 10. Section 76 of the Harbors and Navigation Code is
9 amended to read:

10 76. It is the intent of the Legislature that Harbors and Watercraft
11 Revolving Fund moneys be used to implement the intent of Section
12 71.5 by providing loans directly to private recreational marina
13 owners for the design, acquisition, development, expansion, and
14 improvement of boating facilities. It is the further intent of the
15 Legislature that borrowers receiving loans not charge unreasonably
16 high boat berthing fees at their harbor facilities, but that those
17 borrowers be entitled to charge rates that provide for servicing of
18 borrowed indebtedness obtained to develop those facilities, provide
19 for other expenses incurred in operating the facilities, establish
20 reasonable reserves for repairs, maintenance, and replacement of
21 those facilities, and provide a reasonable return on the borrower's
22 invested capital.

23 SEC. 11. Section 76.3 of the Harbors and Navigation Code is
24 amended to read:

25 76.3. (a) The department may make loans to private marina
26 owners to develop a recreational marina. Loan funds from the
27 department may be utilized for both of the following:

28 (1) Construction costs for berthing facilities, dredging, parking,
29 public access facilities, restrooms, vessel pumpout facilities, oil
30 recycling facilities, utilities, landscaping, receptacles for the
31 purpose of separating, reusing, or recycling all solid waste
32 materials, and other incidental boating-related amenities.

33 (2) Acquisition, collateral appraisals, permit fees, planning,
34 engineering, and design expenses directly related to the items
35 specified in paragraph (1).

36 (b) The department shall not make a loan to a recreational
37 marina that restricts access or bars the public other than that which
38 is consistent with general commercial business practices.

1 (c) Any private marina owner who purchases facilities
2 previously developed with a department loan is eligible to apply
3 for a new construction loan from the department.

4 (d) (1) The department may also make a loan to a recreational
5 marina for the purpose of refinancing an existing loan, subject to
6 the following conditions:

7 (A) Not more than 70 percent of the proceeds from the loan
8 shall be used to refinance an existing loan.

9 (B) Not less than 30 percent of the loan proceeds shall be used
10 for construction activity authorized under this section.

11 (C) The loan applicant shall meet all other requirements under
12 law for loan qualification and any other applicable term or
13 condition of law.

14 (2) This subdivision does not prohibit a person from applying
15 for a loan under subdivision (a).

16 SEC. 12. Section 76.5 of the Harbors and Navigation Code is
17 amended to read:

18 76.5. In processing applications under this article, the
19 department shall give priority to applications from qualified private
20 marina owners who have not received previous loans from the
21 department. If the department finds a proposed loan project is
22 feasible, the loan request shall be submitted to the commission for
23 its advice and consent.

24 SEC. 13. Section 76.6 of the Harbors and Navigation Code is
25 amended to read:

26 76.6. Loans made under this article shall include, but are not
27 limited to, the following terms and conditions:

28 (a) The minimum annual rate of interest charged by the
29 department for a loan shall be set annually by the commission and
30 shall be a rate equal to 1 percent per annum plus the prime or base
31 rate of interest.

32 (b) The department shall require collateral in a minimum amount
33 of 110 percent of the loan.

34 (c) The repayment period of a loan shall not exceed 20 years,
35 or be longer than the length of the borrower's leasehold estate,
36 including renewal options, if the loan is based upon a leasehold
37 estate of the borrower.

38 (d) All loans shall amortize the principal over the term of the
39 loan. However, a loan shall become due and payable in full if the
40 borrower sells or otherwise transfers the recreational marina

1 developed with departmental funds, unless the transfer is, by reason
2 of the death of the borrower, to the borrower's heirs.

3 (e) The department's loans shall not be subordinated to any
4 future loans obtained by a private marina owner, except in those
5 cases involving loans acquired for refinancing previous senior
6 loans.

7 (f) The department may allow assumption of loans from the
8 original borrower by future parties, subject to completion of the
9 application process and upon approval by the department and the
10 commission.

11 (g) The department may, upon written request by the borrower,
12 and upon the approval of the commission, restate an existing loan.

13 SEC. 14. Section 86 of the Harbors and Navigation Code is
14 amended to read:

15 86. (a) The local public agency shall annually certify to the
16 department that for a small craft harbor or boating facility project
17 that is, or has been, funded pursuant to Section 70, 70.2, 70.8, 71.4,
18 ~~71.45~~, 72.5, or 76.3, or a harbor constructed with funds from the
19 State Lands Commission from tidelands oil revenues, adequate
20 restroom and sanitary facilities, parking, refuse disposal, vessel
21 pumpout facilities as required pursuant to Section 776, walkways,
22 oil recycling facilities, receptacles for the purpose of separating,
23 reusing, or recycling all solid waste materials, and other necessary
24 shoreside facilities sufficient for the use and operation of all vessels
25 using the harbor or facility are provided or provide written findings
26 showing why the facility cannot certify to these conditions.

27 (b) A city, county, or district, which has received or is receiving
28 money under this division for the construction or improvement of
29 small craft harbors that provides facilities for the operation of
30 commercial fishing vessels registered pursuant to Article 4
31 (commencing with Section 7880) of Chapter 1 of Part 3 of Division
32 6 of the Fish and Game Code, shall not prohibit the commercial
33 operation and use of those facilities by commercial passenger
34 fishing vessels of the same or similar displacement, which are
35 licensed pursuant to Section 7920 of the Fish and Game Code, or
36 the use by private recreational vessels unless otherwise expressly
37 provided by law, unless the city, county, or district provides,
38 elsewhere in the same harbor, alternative, equivalent facilities
39 available at comparable cost for the commercial operation and use
40 of commercial passenger fishing vessels and private recreational

1 vessels or unless the city, county, or district adopts written findings
2 showing why the existing facility cannot accommodate the
3 operation of commercial fishing vessels, including commercial
4 passenger fishing vessels, or private recreational vessels and why
5 the facility cannot be modified to do so or why alternative,
6 equivalent facilities cannot be provided in the same harbor to
7 accommodate those operations. This subdivision does not require
8 a facility to accept an application for the operation of an additional
9 commercial passenger fishing boat at that facility if the harbor
10 provides alternative, equivalent, adequate, safe facilities at
11 comparable cost for the operation and use of commercial passenger
12 fishing boats or if accommodations for the operation of the
13 additional commercial passenger fishing boat are not reasonably
14 available at the facility under the contract or agreement.

15 For the purposes of this subdivision, an alternative, equivalent
16 facility in the same harbor shall provide, at comparable cost,
17 adequate restroom and sanitary facilities, parking, refuse disposal,
18 vessel pumpout facilities, walkways, oil recycling facilities,
19 receptacles for the purpose of separating, reusing, or recycling all
20 solid waste materials, power and water service, and other shoreside
21 facilities and equivalent docks, water channels, navigation aids,
22 and weather protection, including, but not limited to, breakwaters,
23 which are equivalent to the facility funded pursuant to Section 70,
24 70.2, 70.8, 71.4, ~~71.45~~, 72.5, or 76.3.

25 (c) (1) A loan, grant, contract or agreement, or plan funded
26 pursuant to Section 70, 70.2, 70.8, 71.4, ~~71.45~~, 72.5, or 76.3 for a
27 small craft harbor or boating facility project shall provide for
28 construction, development, or improvement of facilities to meet
29 the provisions of subdivisions (a) and (b), and provide vehicular
30 access roads to the harbor or facility, as recommended by the
31 Department of Transportation pursuant to Division 13
32 (commencing with Section 21000) of the Public Resources Code,
33 unless the reasons for not meeting those provisions and
34 recommendations are set forth in the contract or agreement with
35 the department, or an addendum thereto.

36 (2) The small craft harbor or boating facility shall be designed,
37 constructed, developed, improved, and operated to meet, at a
38 minimum, applicable certification standards described in the Tier
39 1 standards of the California Green Building Standards Code (Part
40 11 of Title 24 of the California Code of Regulations).

1 (d) During the term of any existing or new loan contract made
2 pursuant to Section 71.4, ~~71.45~~, or 76.3, or any existing or new
3 contract or agreement pursuant to Section 70, 70.2, or 70.8, the
4 department shall supervise and monitor compliance with this
5 section and the operation and maintenance of the harbor or facility
6 to assure that the planning, construction, development, or
7 improvement fully complies with this section and the contract or
8 agreement terms and conditions.

9 (e) For the purposes of this chapter and Article 2 (commencing
10 with Section 70) of Chapter 2, a harbor or facility that is the subject
11 of a contract or agreement as described in subdivision (d), is under
12 the jurisdiction of the department.

13 SEC. 15. Chapter 2.5 (commencing with Section 110) of
14 Division 1.5 of the Harbors and Navigation Code is repealed.

15 SEC. 16. Section 131 of the Harbors and Navigation Code is
16 amended to read:

17 131. (a) A person who unlawfully obstructs the navigation of
18 any navigable waters is guilty of a misdemeanor.

19 (b) A person found guilty of a misdemeanor violation of this
20 section, upon first conviction shall be subject to a fine not to exceed
21 one thousand dollars (\$1,000) or imprisonment in the county jail
22 not to exceed 30 days, or both that fine and imprisonment. Upon
23 a second conviction, the punishment shall be a fine not to exceed
24 five thousand dollars (\$5,000) or imprisonment in the county jail
25 not to exceed 90 days, or both that fine and imprisonment. Upon
26 a third or subsequent conviction, the punishment shall be a fine
27 not to exceed ten thousand dollars (\$10,000) or imprisonment in
28 the county jail not to exceed one year, or both that fine and
29 imprisonment.

30 SEC. 17. Section 133 of the Harbors and Navigation Code is
31 amended to read:

32 133. (a) Except in case of emergency imperiling life or
33 property, or unavoidable accident, collision, or stranding, or as
34 otherwise permitted by law, it is unlawful and constitutes a
35 misdemeanor for a person to discharge, or suffer the discharge of,
36 oil by any methods, means, or manner, into or upon the navigable
37 waters of the state from any vessel using oil as fuel for the
38 generation of propulsion power, or any vessel carrying or having
39 oil in excess of that necessary for its lubricating requirements, and

1 as may be required under the laws and prescribed rules and
2 regulations of the United States and this state.

3 (b) As used in this section, the term “oil” means oil of any kind
4 or in any form, including fuel oil, oil sludge, and oil refuse, and
5 the term, “navigable waters of the state,” means all portions of the
6 sea within the territorial jurisdiction of the state, and all inland
7 waters navigable in fact in which the tide ebbs and flows.

8 (c) A person found guilty of a misdemeanor violation of this
9 section, upon first conviction shall be subject to a fine not to exceed
10 one thousand dollars (\$1,000) or imprisonment in the county jail
11 not to exceed 30 days, or both that fine and imprisonment. Upon
12 a second conviction, the punishment shall be a fine not to exceed
13 five thousand dollars (\$5,000) or imprisonment in the county jail
14 not to exceed 90 days, or both that fine and imprisonment. Upon
15 a third or subsequent conviction, the punishment shall be a fine
16 not to exceed ten thousand dollars (\$10,000) or imprisonment in
17 the county jail not to exceed one year, or both that fine and
18 imprisonment.

19 SEC. 18. Section 264 of the Harbors and Navigation Code is
20 amended to read:

21 264. (a) A captain or other person having charge of any steam
22 vessel used for the conveyance of passengers, or of its boilers and
23 engines, who, from ignorance or gross neglect, or for the purpose
24 of excelling any other boat in speed, creates, or allows to be
25 created, such an undue quantity of steam as to burst or break the
26 boiler, or any apparatus or machinery connected with the boiler,
27 by which bursting or breaking human life is endangered, is guilty
28 of a felony.

29 (b) Notwithstanding any other provision of law, a person found
30 guilty of a felony violation of this section, upon first conviction
31 shall be subject to a fine not to exceed eleven thousand dollars
32 (\$11,000) or imprisonment in the state prison not to exceed 18
33 months, or both that fine and imprisonment. Upon a second or
34 subsequent conviction, the punishment shall be a fine not to exceed
35 fifty thousand dollars (\$50,000) or imprisonment in the state prison
36 not to exceed five years, or both that fine and imprisonment.

37 SEC. 19. Section 300 of the Harbors and Navigation Code is
38 amended to read:

1 300. A person who willfully and maliciously cuts, breaks,
2 injures, sinks, or sets adrift a vessel of less than ten gross tons that
3 is the property of another is guilty of a misdemeanor.

4 SEC. 20. Section 301 of the Harbors and Navigation Code is
5 amended to read:

6 301. A person who willfully and maliciously cuts, breaks, or
7 injures a vessel of ten gross tons and upwards that is the property
8 of another is guilty of a misdemeanor.

9 SEC. 21. Section 302 of the Harbors and Navigation Code is
10 amended to read:

11 302. A person who willfully and maliciously sinks or sets adrift
12 a vessel of ten gross tons and upwards that is the property of
13 another is guilty of a felony.

14 SEC. 22. Section 304 of the Harbors and Navigation Code is
15 amended to read:

16 304. A person in command or charge of a vessel, who, within
17 this state, willfully wrecks, sinks, or otherwise injures or destroys
18 it or any of its cargo, or willfully permits the same to be wrecked,
19 sunk, or otherwise injured or destroyed, with intent to prejudice
20 or defraud a person, is guilty of a felony.

21 SEC. 23. Section 305 of the Harbors and Navigation Code is
22 amended to read:

23 305. A person, other than one described in Section 304 who is
24 guilty of any act specified in that section is guilty of a felony.

25 SEC. 24. Section 306 of the Harbors and Navigation Code is
26 amended to read:

27 306. A person who prepares, makes, or subscribes a false or
28 fraudulent manifest, invoice, bill of lading, ship's register, or
29 protest, with intent to defraud another, is guilty of a felony.

30 SEC. 25. Section 307 of the Harbors and Navigation Code is
31 amended to read:

32 307. A person who moors a vessel to, or hangs on with a vessel
33 to a buoy or beacon, except a designated mooring buoy, or who
34 willfully removes, damages, or destroys, a buoy or beacon, placed
35 by competent authority in any navigable waters of this state, is
36 guilty of a misdemeanor.

37 SEC. 26. Section 308 of the Harbors and Navigation Code is
38 amended to read:

39 308. A person who moors a vessel of any kind, to a buoy or
40 beacon, except a designated mooring buoy, placed in the waters

1 of the state by authority of the United States Coast Guard, or who
2 in any manner hangs on to the same, with a vessel, or who willfully
3 removes, damages, or destroys any such buoy or beacon, or any
4 part of the buoy or beacon, or who cuts down, removes, damages,
5 or destroys a beacon erected on land in this state by that authority,
6 is, for every offense, guilty of a misdemeanor.

7 SEC. 27. Section 309 is added to the Harbors and Navigation
8 Code, to read:

9 309. A person found guilty of a misdemeanor violation as
10 provided in this chapter, upon first conviction shall be subject to
11 a fine not to exceed one thousand dollars (\$1,000) or imprisonment
12 in the county jail not to exceed 30 days, or both that fine and
13 imprisonment. Upon a second conviction, the punishment shall be
14 a fine not to exceed five thousand dollars (\$5,000) or imprisonment
15 in the county jail not to exceed 90 days, or both that fine and
16 imprisonment. Upon a third or subsequent conviction, the
17 punishment shall be a fine not to exceed ten thousand dollars
18 (\$10,000) or imprisonment in the county jail not to exceed one
19 year, or both that fine and imprisonment.

20 SEC. 28. Section 310 is added to the Harbors and Navigation
21 Code, to read:

22 310. Notwithstanding any other provision of law, a person
23 found guilty of a felony violation as provided in this chapter, upon
24 first conviction shall be subject to a fine not to exceed eleven
25 thousand dollars (\$11,000) or imprisonment in the state prison not
26 to exceed 18 months, or both that fine and imprisonment. Upon a
27 second or subsequent conviction, the punishment shall be a fine
28 not to exceed fifty thousand dollars (\$50,000) or imprisonment in
29 the state prison not to exceed five years, or both that fine and
30 imprisonment.

31 SEC. 29. Section 505.5 of the Harbors and Navigation Code
32 is amended to read:

33 505.5. (a) Whenever the lien upon any vessel is lost by reason
34 of the loss of possession through trick, fraud, or device, the
35 repossession of the vessel by the former lienholder claimant revives
36 the lien, but a lien so revived is subordinate to any right, title, or
37 interest of a person under a sale, transfer, encumbrance, lien, or
38 other interest acquired or secured in good faith and for value
39 between the time of the loss of possession and the time of
40 repossession.

1 (b) It is a misdemeanor for a person to obtain possession of a
2 vessel or any part of the vessel subject to a lien pursuant to the
3 provisions of this chapter by trick, fraud, or device.

4 (c) It is a misdemeanor for a person claiming a lien on a vessel
5 to knowingly violate this article.

6 (d) A person found guilty of a misdemeanor violation of
7 subdivision (b) or (c) of this section, upon first conviction shall
8 be subject to a fine not to exceed one thousand dollars (\$1,000) or
9 imprisonment in the county jail not to exceed 30 days, or both that
10 fine and imprisonment. Upon a second conviction, the punishment
11 shall be a fine not to exceed five thousand dollars (\$5,000) or
12 imprisonment in the county jail not to exceed 90 days, or both that
13 fine and imprisonment. Upon a third or subsequent conviction, the
14 punishment shall be a fine not to exceed ten thousand dollars
15 (\$10,000) or imprisonment in the county jail not to exceed one
16 year, or both that fine and imprisonment.

17 SEC. 30. Section 571 of the Harbors and Navigation Code is
18 amended to read:

19 571. (a) A person who takes away any goods from a stranded
20 vessel, or any goods cast by the sea upon the land, or found in a
21 bay or creek, or who knowingly has in his or her possession any
22 goods so taken or found, and does not deliver them to the sheriff
23 of the county where they were found, or notify him or her of his
24 or her readiness to do so within 30 days after they have been taken
25 by him or her or have come into his or her possession, is guilty of
26 a misdemeanor.

27 (b) A person found guilty of a misdemeanor violation of this
28 section, upon first conviction shall be subject to a fine not to exceed
29 one thousand dollars (\$1,000) or imprisonment in the county jail
30 not to exceed 30 days, or both that fine and imprisonment. Upon
31 a second conviction, the punishment shall be a fine not to exceed
32 five thousand dollars (\$5,000) or imprisonment in the county jail
33 not to exceed 90 days, or both that fine and imprisonment. Upon
34 a third or subsequent conviction, the punishment shall be a fine
35 not to exceed ten thousand dollars (\$10,000) or imprisonment in
36 the county jail not to exceed one year, or both that fine and
37 imprisonment.

38 SEC. 31. Section 652 of the Harbors and Navigation Code is
39 amended to read:

1 652. (a) The department may issue regulations to do all of the
2 following:

3 (1) Establish minimum safety standards for boats and associated
4 equipment.

5 (2) Require the installation, carrying, or using of associated
6 equipment.

7 (3) Prohibit the installation, carrying, or using of associated
8 equipment that does not conform with safety standards established
9 pursuant to this chapter.

10 (b) The regulations shall conform with the federal navigation
11 laws or with the navigation rules promulgated by the United States
12 Coast Guard, or any successor thereto.

13 (c) A person or public agency shall not use or give permission
14 for the use of a vessel that does not carry the equipment or meet
15 the standards established pursuant to this chapter.

16 (d) A peace officer or harbor police officer authorized to enforce
17 this chapter may order the termination of the operation of a vessel
18 that is found to be unsafe for operation pursuant to Section 6550.5
19 of Title 14 of the California Code of Regulations. A violation of
20 an order under this subdivision is a misdemeanor.

21 (e) A person found guilty of a misdemeanor violation of
22 subdivision (d), or of any regulation adopted by the department
23 pursuant to this section, upon first conviction shall be subject to a
24 fine not to exceed one thousand dollars (\$1,000) or imprisonment
25 in the county jail not to exceed 30 days, or both that fine and
26 imprisonment. Upon a second conviction, the punishment shall be
27 a fine not to exceed five thousand dollars (\$5,000) or imprisonment
28 in the county jail not to exceed 90 days, or both that fine and
29 imprisonment. Upon a third or subsequent conviction, the
30 punishment shall be a fine not to exceed ten thousand dollars
31 (\$10,000) or imprisonment in the county jail not to exceed one
32 year, or both that fine and imprisonment.

33 SEC. 32. Section 654.5 of the Harbors and Navigation Code
34 is amended to read:

35 654.5. A person who maliciously throws, hurls, or projects an
36 object by manual, mechanical, or other means at a vessel or an
37 occupant of a vessel on any of the waters within or bordering on
38 this state, which act does not constitute a violation of either Section
39 242 or 594 of the Penal Code, is guilty of a misdemeanor, and
40 upon first conviction the punishment shall be a fine not to exceed

1 one thousand dollars (\$1,000) or imprisonment in the county jail
2 not to exceed 30 days, or both that fine and imprisonment. Upon
3 a second conviction, the punishment shall be a fine not to exceed
4 five thousand dollars (\$5,000) or imprisonment in the county jail
5 not to exceed 90 days, or both that fine and imprisonment. Upon
6 a third or subsequent conviction, the punishment shall be a fine
7 not to exceed ten thousand dollars (\$10,000) or imprisonment in
8 the county jail not to exceed one year, or both that fine and
9 imprisonment.

10 SEC. 33. Section 658.3 of the Harbors and Navigation Code
11 is amended to read:

12 658.3. (a) A person shall not operate a motorboat, sailboat, or
13 vessel that is 26 feet or less in length, unless every person on board
14 who is under 13 years of age is wearing a type I, II, III, or V Coast
15 Guard-approved personal flotation device while that motorboat,
16 sailboat, or vessel is underway.

17 (b) Subdivision (a) does not apply to a person operating a
18 sailboat on which a person who is under 13 years of age is
19 restrained by a harness tethered to the vessel, or to a person
20 operating a vessel on which a person who is under 13 years of age
21 is in an enclosed cabin.

22 (c) A person on board a personal watercraft or a person being
23 towed behind a vessel on water skis, an aquaplane, or similar
24 device, except for an underwater maneuvering device intended for
25 use by a submerged swimmer, shall wear a type I, II, III, or V
26 Coast Guard-approved personal flotation device. An underwater
27 maneuvering device is a towed or self-powered apparatus that a
28 person can pilot through diving, turning, and surfacing maneuvers
29 that is designed for underwater use.

30 (1) This subdivision does not apply to a person aboard a personal
31 watercraft or a person being towed behind a vessel on water skis,
32 if that person is a performer engaged in a professional exhibition,
33 or preparing to participate or participating in an official regatta,
34 marine parade, tournament, or exhibition.

35 (2) In lieu of wearing a Coast Guard-approved personal flotation
36 device of a type described in this subdivision, a person engaged
37 in slalom skiing on a marked course or a person engaged in
38 barefoot, jump, or trick waterskiing may elect to wear a wetsuit
39 designed for the activity and labeled by the manufacturer as a water
40 ski wetsuit. A Coast Guard-approved personal flotation device of

1 a type described in this subdivision shall be carried in the tow
2 vessel for each skier electing to wear a water ski wetsuit pursuant
3 to this paragraph.

4 (d) The requirements set forth in subdivisions (a) and (c) do not
5 apply to a person operating a motorboat, sailboat, or vessel if the
6 operator is reacting to an emergency rescue situation.

7 (e) The following definitions govern the construction of this
8 section:

9 (1) “Enclosed cabin” means a space on board a vessel that is
10 surrounded by bulkheads and covered by a roof.

11 (2) “Operate a motorboat, sailboat, or vessel” means to be in
12 control or in charge of a motorboat, sailboat, or vessel while it is
13 underway.

14 (3) “Underway” means all times except when the motorboat,
15 sailboat, or vessel is anchored, moored, or aground.

16 (f) A violation of this section is an infraction punishable as
17 provided in subdivision (a) of Section 668.

18 SEC. 34. Section 660.2 of the Harbors and Navigation Code
19 is repealed.

20 SEC. 35. Section 668.1 of the Harbors and Navigation Code
21 is amended to read:

22 668.1. (a) A person convicted of a violation of subdivision
23 (a), (b), (c), (d), (e), or (f) of Section 655, or of Section 655.2,
24 655.6, 655.7, 658, or 658.5, or of subdivision (a) or (b) of Section
25 681, or of Section 191.5 or subdivision (a) of Section 192.5 of the
26 Penal Code, or of the federal rules of the road and pilot rules, not
27 including equipment requirements, incorporated by reference in
28 Section 6600.1 of Title 14 of the California Code of Regulations,
29 or found by a court to have performed any of the acts described
30 in Section 6697 of Title 14 of the California Code of Regulations,
31 pertaining to a mechanically propelled vessel but not to
32 manipulating any water skis, an aquaplane, or similar device, when
33 the conviction resulted from the operation of a vessel, shall be
34 ordered by the court to complete and pass a boating safety course
35 approved by the department pursuant to Section 668.3.

36 (b) A person who has been ordered by the court to complete
37 and pass a boating safety course pursuant to this section shall
38 submit to the court proof of completion and passage of the course
39 within seven months of the time of his or her conviction. The proof
40 shall be in a form that has been approved by the department and

1 that provides for the ability to submit the form to the court through
2 the United States Postal Service. If the person who has been
3 required to complete and pass a boating safety course is under 18
4 years of age, the court may require that the person obtain parental
5 consent to enroll in the course. If the person does not complete
6 and pass the boating safety course, the court may extend the period
7 for completion or impose another penalty as prescribed by statute.

8 (c) The department shall adopt regulations to carry out this
9 section, including approval of boating safety education courses,
10 as specified in Section 668.3, prescribing the forms for proof of
11 completion and passage, approval of testing to indicate appropriate
12 mastery of the course subject matter, and setting forth any fees to
13 be charged to course participants, which fees shall not exceed the
14 expenses associated with providing the course.

15 SEC. 36. Section 738 of the Harbors and Navigation Code is
16 amended to read:

17 738. (a) Each violation of a section or subdivision of a section
18 of this article, excepting Section 709, is a misdemeanor punishable
19 by a fine not exceeding one thousand dollars (\$1,000), provided
20 that a violation committed willfully and with knowledge of the
21 provisions of the violated section or subdivision is punishable by
22 a fine not exceeding one thousand dollars (\$1,000), or by
23 imprisonment in the county jail not exceeding one year, or by both
24 that fine and imprisonment.

25 (b) Each violation of Section 709 is a misdemeanor punishable
26 by a fine not exceeding one thousand dollars (\$1,000), or by
27 imprisonment in the county jail not exceeding one year, or by both
28 that fine and imprisonment.

29 (c) Upon a second conviction for a misdemeanor violation of
30 subdivision (a) or (b), the punishment shall be a fine not to exceed
31 five thousand dollars (\$5,000) or imprisonment in the county jail
32 not to exceed 90 days, or both that fine and imprisonment. Upon
33 a third or subsequent conviction, the punishment shall be a fine
34 not to exceed ten thousand dollars (\$10,000) or imprisonment in
35 the county jail not to exceed one year, or both that fine and
36 imprisonment.

37 SEC. 37. Section 780 of the Harbors and Navigation Code is
38 amended to read:

39 780. (a) A person shall not disconnect, bypass, or operate a
40 marine sanitation device so as to discharge sewage into the waters

1 of this state, unless the particular discharge is expressly authorized
2 or permitted pursuant to state or federal law or regulations. A
3 violation of this subdivision is a misdemeanor.

4 (b) The following prohibitions apply in no-discharge areas:

5 (1) A person shall not disconnect, bypass, or operate a marine
6 sanitation device so as to potentially discharge sewage.

7 (2) A person shall not occupy or operate a vessel in which a
8 marine sanitation device is installed unless the marine sanitation
9 device is properly secured.

10 The first violation of this subdivision is an infraction punishable
11 by a fine of up to five hundred dollars (\$500). A second or
12 subsequent violation of this subdivision by any one person is a
13 misdemeanor.

14 (c) A person found guilty of a misdemeanor violation of
15 subdivision (a) or (b), upon first conviction shall be subject to a
16 fine not to exceed one thousand dollars (\$1,000) or imprisonment
17 in the county jail not to exceed 30 days, or both that fine and
18 imprisonment. Upon a second conviction, the punishment shall be
19 a fine not to exceed five thousand dollars (\$5,000) or imprisonment
20 in the county jail not to exceed 90 days, or both that fine and
21 imprisonment. Upon a third or subsequent conviction, the
22 punishment shall be a fine not to exceed ten thousand dollars
23 (\$10,000) or imprisonment in the county jail not to exceed one
24 year, or both that fine and imprisonment.

25 SEC. 38. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for certain
27 costs that may be incurred by a local agency or school district
28 because, in that regard, this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty for a crime
30 or infraction, within the meaning of Section 17556 of the
31 Government Code, or changes the definition of a crime within the
32 meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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